

TROUTMAN SANDERS LLP
5 PARK PLAZA
SUITE 1400
IRVINE, CA 92614-2545

PAUL L. GALE (SBN 065873)
paul.gale@troutmansanders.com
SIAVASH DANIEL RASHTIAN (SBN 228644)
daniel.rashtian@troutmansanders.com
THOMAS H. PROUTY (SBN 238950)
thomas.prouty@troutmansanders.com
TROUTMAN SANDERS LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614-2545
Telephone: 949.622.2700
Facsimile: 949.622.2739

JOHN R. GERSTEIN (*admitted pro hac vice*)
jack.gerstein@troutmansanders.com
TROUTMAN SANDERS LLP
401 9th Street, N.W., Suite 1000
Washington, D.C. 20004-2134
Telephone: 202.274.2950
Facsimile: 202.274.2994

Attorneys for Defendants
NJOY, INC. and SOTERRA, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE
NJOY, INC. CONSUMER CLASS
ACTION LITIGATION

Case No. CV 14-00428-MMM (RZx)
consolidated with SACV 14-00427-
MMM (RZx)

Honorable Margaret M. Morrow

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS CONSOLIDATED
AMENDED COMPLAINT**

Date: October 6, 2014
Time: 10:00 a.m.
Place: Courtroom 780

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on October 6, 2014 at 10:00 a.m., or as
 3 soon thereafter as counsel may be heard in Courtroom 780 of the above-entitled
 4 Court located at 255 E. Temple St., Los Angeles, CA 90012, Defendants NJOY,
 5 Inc. and Soterra, Inc. (“Defendants”) will and hereby do move this Court for an
 6 order dismissing the Second Consolidated Amended Complaint (Dkt. 66)
 7 (“SCAC”), and each claim contained therein, filed by plaintiffs Ben Z. Halberstam,
 8 Eric McGovern, Kathryn Thomas and Paula Kolano (collectively, “Plaintiffs”).

9 This Motion is made pursuant to Rules 8, 9(b) and 12(b)(6) of the Federal
 10 Rules of Civil Procedure, and is based on the following grounds:

- 11 • The SCAC is subject to Rule 9(b)’s heightened pleading standards;
 12 however, Plaintiffs failed to plead several key elements of their claims
 13 with particularity;
- 14 • By failing to allege which, if any, of the challenged advertisements
 15 that Plaintiffs’ saw and upon which they relied prior to their respective
 16 purchases, Plaintiffs failed to plead their claims’ requisite elements of
 17 reliance and causation;
- 18 • Plaintiffs’ claims based on Defendants’ affirmative statements fail as a
 19 matter of law, because the statements are generalized, non-specific and
 20 subjective, and therefore are non-actionable;
- 21 • Plaintiffs’ claims based on Defendants’ affirmative statements also fail
 22 as a matter of law under the “likely to mislead a reasonable consumer”
 23 standard;
- 24 • Plaintiffs’ breach of express warranty claims fail because Plaintiffs fail
 25 to state the alleged warranties’ exact terms;
- 26 • Plaintiffs’ claims based on Defendants’ alleged nondisclosures fail
 27 because Plaintiffs do not sufficiently allege that Defendants actually
 28

1 knew whatever facts that Plaintiffs claim should have been disclosed;
2 and

- 3 • Plaintiffs' claims based on Defendants' alleged nondisclosures also
4 fail because Plaintiffs have not pled sufficient facts triggering a duty to
5 disclose whatever facts Plaintiffs claim should have been disclosed.

6 This Motion is based upon this Notice of Motion and Motion, the
7 concurrently filed Memorandum of Points and Authorities, and all pleadings and
8 papers on file in this action and upon such other matters and arguments as may be
9 presented to the Court prior to and at the time of the hearing.

10 This Motion is made following the conference of counsel pursuant to Local
11 Rule 7-3, which took place on July 16, 2014.

12
13 Dated: August 11, 2014

Respectfully submitted,

14 TROUTMAN SANDERS LLP

15
16 By: /s/ Paul L. Gale

17 Paul L. Gale
18 Siavash Daniel Rashtian
19 Thomas H. Prouty
20 John R. Gerstein

21 Attorneys for Defendants
22 NJOY, INC. and SOTERRA, INC.
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